

REMARKS

Claims 1-2, and 22-42 are pending.

I. The Election Requirement and Applicant's Provisional Election

The Examiner required election as the Application allegedly contains claims directed to more than one species of the generic invention. These species are allegedly are not so linked as to form a single general inventive concept under PCT Rule 13.1. Therefore, the Examiner believes the Applicant is required to elect one specific human or humanized or chimeric monoclonal antibody, wherein the antibody:

A) has the ability to induce specific cytokines (e.g. TNF as recited in claim 24), and

B) is directed against specific antigen (e.g. Rhesus D of human blood cells as recited in claim 30). following species must be elected:

See Office Action, p. 4.

In response, Applicants hereby elect, with traverse, the anti-HLA-DR antibody, directed to claims 1-2, 22-33 and 38-42. This antibody is capable of inducing specific cytokines such as TNF.

Applicants note that upon allowance of the generic claims, any claims to non-elected species should no longer be considered withdrawn. C.f. MPEP § 809.

II. Claimed Antibodies Exhibit Corresponding Special Technical Features

Applicants traverse the election requirement because the unity of invention standard must be applied in national stage applications. Section 1850 of the Manual of Patent Examining Procedure (revised 8th edition, published August, 2006) (hereinafter "MPEP") provides that

when the Office considers international applications . . . during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111

. . .

In applying PCT Rule 13.2 to . . . national stage applications under 35 U.S.C. 371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2

MPEP at page 1800-94.

MPEP section 1893.03(d) reiterates the Examiner's obligation to apply the Unity of Invention standard PCT Rule 13.2 instead of U.S. restriction/election of species practice:

Examiners are reminded that unity of invention (not restriction) practice is applicable . . . in national stage applications submitted under 35 U.S.C. 371.

Id. at page 1800-199, col. 2.

The present invention is directed to particular antibodies. All of the claimed antibodies are capable of inducing cytokine production in effector cells and are selected based on their particular glycosylation of the Fc fragment or the glycan structure which has been modified *ex vivo*. This is a "special technical feature" shared by all of the inventions in this application. All of the claims should, therefore, be examined together in one application without the required election.

Harris does not describe antibodies that inherently teach the general inventive concept of this application. Harris does not anticipate nor suggest the selection of antibodies displaying superior activity thanks to their glycosylation profile and ability to induce secretion of cytokines. Harris teaches that humanized antibodies are more effective than chimeric antibodies because of an optimized kappa chain. This property is distinct from the enhancement of the activity via the Fc chain of antibodies.

In addition, YB2/0 does not always produce optimized antibodies. A selection of clones from YB2/0 is required and this application teaches the selection of antibodies that are capable of inducing cytokine production of effector cells. Therefore, Harris does not inherently teach the current invention since YB2/0 can produce different antibodies with different glycosylation profiles.

Thus, in the present case, unity of invention does exist between all claims. Therefore, Applicant respectfully requests that the Examiner withdraw the Election Requirement.

III. Conclusion

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

If there are any fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 19-0741. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should be charged to our Deposit Account.

Respectfully submitted,

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